

JACKSONVILLE POLICE DEPARTMENT

Policy: 5-22

Effective: 01-01-14

Revised: 01-13-21

RECORDING / FILMING OF LAW ENFORCEMENT ACTIVITY

PURPOSE: To direct employees of this Department with respect to the proper law enforcement response to citizens who are recording/filming officers.

POLICY: It is the policy of this Department to uphold the Constitutional Rights of all persons. This policy includes ensuring the First (1st), Fourth (4th), and Fifth (5th) Amendment rights of individuals to document the conduct of employees of this Department through video and audio recordings are facilitated.

DEFINITIONS:

- I. **LEGAL PRESENCE/LAWFUL PRESENCE:** Any area where a person has the legal right to be thus, private property owned or occupied with permission of the property owner; public buildings such as stores, malls etc. and public areas such as streets, sidewalks etc.
- II. **RECORDING DEVICE:** Any device capable of recording audio or video to include but not limited to cameras (still and video); recorders; cellular devices, PDAs, tablets, or any other device capable of such recording.
- III. **ENFORCEMENT ACTION:** includes but is not limited to arrest; detention; seizure of recording equipment; deletion of video/audio; damaging the equipment; threatening, intimidating, discouraging, or coercive conduct aimed at ending the recording; blocking or otherwise obstructing the ability to record without a proper law enforcement objective such as an open air crime scene where it is necessary to block the view for the integrity of the investigation;
- IV. **DESIGNATED FIRST AMENDMENT/SAFETY ZONE:** A geographic area designated for demonstrations/protests balancing the right to protest with the right of citizens not involved in the protest to safely travel through the area. Such areas are sometimes designated for purposes of controlling the safety of all persons during large scale demonstrations/protests.

PROCEDURES:

- A. Employees of this Department shall not prohibit the recording of law enforcement activity or take enforcement action under circumstances where the person making the recording has legal presence in the area where they are standing.
- B. Recording law enforcement action from an area where the subject is lawfully present does not constitute an offense.
- C. Officers shall not take enforcement action by way of intimidation or coercion to end the recording; by obstructing the ability to record from an area of lawful presence; or by discouraging the person from continuing the recording.
- D. Every person has a First (1st) Amendment right to observe and record law enforcement officers in the discharge of their public duties.
- E. Recording law enforcement officers engaged in public duties is a form of speech through which private individuals may gather and disseminate information of public concern, including the conduct of law enforcement officers.

- F. Employees of this Department should be aware that the First Amendment gives no heightened protection to members of the press, thus, members of the public have the same rights to record as would a member of the press.
- G. If someone at a demonstration is filming officer conduct no enforcement action will be taken irrespective of pre-established demonstration/safety zones unless it can be established that they are a threat to security.
- H. All persons also have a First (1st) Amendment right to verbally challenge and criticize an officer who is making an arrest. Such a challenge includes the right to document the officer's actions through audio and visual recording.
- I. Obstruction/Hindering/Interference type charges against a person recording are generally inappropriate except:
 1. When the person, through their actions, puts the officers' safety, the suspect's safety, or the public's safety at risk. Some court decisions have indicated that without physical action or a threat toward an officer, no arrest will be justified.
 2. The recorder enters a clearly marked crime scene without authorization.
 3. The recorder enters an area which is closed to the public and clearly marked due to an ongoing emergency (i.e. SWAT scene, fire scene, etc.)
 4. The recorder enters private property which is not open to the public without the authorization of the owner/occupier of said property. In such a case, the officer should determine the wishes of the owner/occupier before taking significant enforcement action such as an arrest. Where an arrest is indicated, the officer must follow the legal mandates of arrest, for example, a required warning in a trespass case.
- J. When confronted with a person who the officer perceives as bordering on a lawful obstruction or hindering charge, the officer shall, where practical and feasible, inform the subject that their actions are interfering with the officer's duties and ask them to move to a less intrusive position where they can continue to record but will not interfere.
- K. When an officer is considering taking enforcement action such as an arrest or the seizure of a recording device, the officer shall call a supervisor for direction
- L. Seizing, Manipulating, Erasing, Deleting or Inspecting Devices or Recordings:
 1. Officers and supervisors are advised that there is a heightened reasonableness requirement when officers seek to seize items protected by the First (1st) Amendment as is the case when dealing with recordings under this policy. Thus, more facts and circumstances and a greater government interest must be present before officers and supervisors should consider such a seizure.
 2. Officers shall not erase, delete, or otherwise corrupt a recording held by an individual.
 3. The seizure of a recording device or the recording itself constitutes a seizure under the Fourth (4th) Amendment and unless one of the warrant exceptions (i.e. consent or exigency) applies, the seizure must be supported by a warrant.
 4. If the officer has reason to believe that the person intends to publicly broadcast the recording, the seizure of the equipment and the tape even with a warrant may violate the Privacy Protection Act. 18 U.S.C. 2000a which provides: 42 U.S.C. sec. 2000 (aa):..."Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public, a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce..."
 5. In all cases prior to a lawful seizure, officers should consider seeking the consensual cooperation of the individual in possession of the recording and where possible record the consent.
 - a. Consent must be voluntary on the part of the individual and must not be the result of duress or coercion.